

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

August 22, 2008

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Ref. No.: GLS-5131

HAWAII

Consent to Assign General Lease No. S-5131, Shonna Rosalie Nani Kuahuia Taetuna, Assignor, to Cheyenne Kuahuia, Assignee, Milolii-Hoopulua, South Kona, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 8-9-14: 17

APPLICANT:

Shonna Rosalie Nani Kuahuia Taetuna, Assignor, to Cheyenne Kuahuia, Assignee, Tenant in Severalty, whose mailing address is 75-5791 Lopeka Place, Kailua-Kona, Hawaii 96740, as Assignee.

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION AND AREA:

Portion of Government lands of Milolii-Hoopulua Houselots, Phase II, Lot 4, situated at Milolii-Hoopulua, South Kona, Hawaii, identified by Tax Map Key: 3<sup>rd</sup>/ 8-9-14: 17, consisting of approximately 10,588 square feet, as shown on the attached map labeled Exhibit A.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

Residential and storage of boats and other fishing implements purposes.

TERM OF LEASE:

65-years, commencing on December 31, 1986 and expiring on December 30, 2051. First rental reopening is scheduled for December 31, 2011.

ANNUAL RENTAL:

\$132.00. Due in semi-annual installments of \$66.00, on the First of January and July, of each and every year.

CONSIDERATION:

Unspecified valuable consideration

RECOMMENDED PREMIUM:

Not applicable as the lease does not allow for a premium.

DCCA VERIFICATION:

ASSIGNOR:

Not applicable, Assignor is an individual and is not required to register with DCCA.

ASSIGNEE:

Not applicable, Assignee is an individual and is not required to register with DCCA.

REMARKS:

Act 62, Session Laws of Hawaii 1982, as amended by Act 83, Session Laws of Hawaii 1984, authorized the Department of Land and Natural Resources to negotiate and enter into long term leases to persons residing in Milolii who were dispossessed or displaced as a result of the 1926 volcanic eruption of Mauna Loa on the Island of Hawaii. Act 362, Session Laws of Hawaii 1987, as amended by Act 68, Session Laws of Hawaii 1989, and Act 86, Session Laws of Hawaii 1991, extended the sunset date to January 1, 1989, providing sufficient time to process Phase III of the Milolii-Hoopuloa Lots.

Although Act 62 (SLH 1982) and Act 83 (SLH 1984) do not specifically address restrictions against assignments of leases, the acts do set forth the criteria for qualifying as a lessee under those leases. The general leases issued under the Act require prior written approval of the Board of Land and Natural Resources for assignments, and further require prospective Assignees to meet the qualification criteria under the Act.

At its meeting of June 22, 1984, and December 28, 1984, the Board under agenda Item H-2 and F-3, as amended, respectively, authorized the disposition of direct negotiation of residential leases at Milolii and Hoopuloa.

On September 27, 1986, a drawing was held for 21 lots in Phase II of Milolii-Hoopuloa residential lots. Shonna Rosalie Nani Kuahuia Taetuna was one of the persons whose name was chosen in the drawing. On December 31, 1986, Mrs. Taetuna entered into General Lease No. S-5131 for Phase II, Lot 4 of Milolii-Hoopuloa Lots.

On July 21, 1989, Mrs. Taetuna secured purchase money financing for the subject property from First Hawaiian Bank. On October 26, 1998, the Chairperson approved the refinancing of the loan by BNC Mortgage, Inc. ("BNC"), whose mortgage on the property was recorded in the Bureau of Conveyances of the State of Hawaii on November 13, 1998 as Document No. 98-169908. Shortly thereafter, BNC assigned the mortgage to First National Bank of Chicago, as trustee ("FNB"), by Assignment of Mortgage dated November 18, 1998.

Mrs. Taetuna subsequently defaulted on the mortgage and FNB foreclosed under a power of sale. A public auction was held on February 4, 2000, and FNB was the high bidder for the property, bidding \$83,000.00. By Assignment of Lease dated July 19, 2000, FNB purported to remise, release and quitclaim all of the right, title and interest in the lease to itself. However, the lease restricts purchasers of the property at foreclosure to persons who are qualified to lease the land under the provisions of Act 62, Session Laws of Hawaii 1982.

Subsequently, FNB became Bank One, N.A. Bank One N.A.'s interest in the property purportedly passed to JPMorgan Chase Bank, N.A. as trustee successor in interest. JPMorgan Chase Bank, N.A.'s interest in the property purportedly passed to The Bank of New York. The banks neglected to obtain the prior written consent of the Board to any of these assignments or transfers of their interests in the subject property. In any event, the banks could not qualify as lessees of the property under the provisions of the lease and applicable law. Ocwen Federal Bank, FSB, Tax Escrow Department ("Ocwen"), has been acting as the loan servicing agent for these banks as to the subject property since at least March 2003.

At the present time, Mrs. Taetuna, Cheyenne Kuahuia, and The Bank of New York, recognizing the restrictions on ownership of the leasehold interest in the property, desire to restore title to the leasehold interest to a person qualified to be a lessee under applicable law. Ms. Kuahuia is Mrs. Taetuna's daughter. Ms. Kuahuia is qualified to be a lessee of property at Milolii-Hoopuloa. The parties are in escrow to close a transaction by which The Bank of New York will quitclaim its interest in the property to Mrs. Taetuna, and Mrs. Taetuna will immediately assign her interest in the lease to Ms. Kuahuia.

To implement this transaction, The Bank of New York has executed a Cancellation of Assignment of Lease and Reassignment by which the bank quitclaims its interest in the property to Mrs. Taetuna. Additionally, Mrs. Taetuna has executed an Assignment of General Lease No. S-5131 assigning her interest in the property to Ms. Kuahuia. The Bank of New York has also executed a Release of Mortgage as to the BNC mortgage

dated October 27, 1998 and recorded in the Bureau as Document No. 98-169908. These instruments are in recordable form and the parties have advised staff that the instruments will be recorded when the Board approves the action and the escrow closes.

The County of Hawaii, Real Property Tax Office has informed staff that property tax in the amount of \$2,665.59 is currently past due for the subject parcel. Staff notified the parties involved of the outstanding taxes due. Bryan Thomas, realtor assigned to manage the property for Ocwen Bank informed us that the back taxes would be handled through the title company at escrow closing. As a result, staff recommends that the Board approve this request, permitting continued processing of the assignment of lease, leaving the parties involved to handle/ resolve the tax matter among themselves.

Ms. Kuahuia, as assignee, has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions. Nor has Mrs. Taetuna, the assignor, had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

The first rental reopening is scheduled for December 31, 2011. There are no outstanding rental reopening issues.

Staff reviewed the file and can report that for the past two (2) years, a notice of default was issued on January 26, 2007 to Ocwen for failure to pay rent and provide liability insurance. No liability insurance has been obtained for the property. Another notice of default was issued to Ocwen on January 25, 2008 for failure to pay rent. The rent was brought current on August 7, 2008. Mrs. Taetuna, the banks and Ms. Kuahuia have not been cited for any illegal or unlawful activity on the property.

The Office of Hawaiian Affairs was not solicited for comments as this is not a new disposition or change in use.

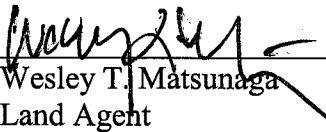
Ms. Kuahuia is a qualified applicant/assignee for a Milolii residential lease as evidenced by her Birth Certificate, which indicates that she is the daughter of Mrs. Taetuna, who qualified under the Act as a lessee.

#### RECOMMENDATION:


- A. That the Board consent to the Assignment of General Lease No. S-5131, Shonna Rosalie Nani Kuahuia Taetuna, as Assignor, to Cheyenne Kuahuia (also known as Cheyenne M. Kuahuia, Cheyenne Moetia Kuahuia, Cheyenne M.T. Kuahuia, and Cheyenne Moetia Taetuna Kuahuia), as Assignee, subject to the following:
  1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;

2. The Bank of New York/ Ocwen and/or Cheyenne Kuahuia shall be responsible for payment of \$2,665.95 in past due real property taxes on the subject State leasehold property;
3. Cheyenne Kuahuia to submit a basic homeowner's liability insurance/ Certificate of Liability Insurance for the property as required under the lease, within sixty (60) days of this approval;
4. Review and approval by the Department of the Attorney General; and
5. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

  
Wesley T. Matsunaga  
Land Agent

APPROVED FOR SUBMITTAL:

  
Laura H. Thielen, Chairperson

